

**SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION  
TRIAL TERM, PART 44 SUFFOLK COUNTY**

PRESENT: Honorable Elizabeth H. Emerson

MOTION DATE: 6-12-09  
SUBMITTED: 6-18-09  
MOTION NO.: 001-MD

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BROADWAY NEON SIGN CORP.,

Plaintiff,

-against-

CARL PAPARELLA, ESQ.  
Attorney for Plaintiff  
3140 Fifth Avenue  
Ronkonkoma, New York 11779

THOMAS T. SWIFT,

Defendant.

SAUL D. ZABELL, ESQ.  
Attorney for Defendant  
4875 Sunrise Highway, Suite 300  
Bohemia, New York 11716

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Upon the following papers numbered 1 13 read on this motion for preliminary injunction ; Order to Show Cause and supporting papers 1-7 ; Notice of Cross Motion and supporting papers \_\_\_\_\_ ; Answering Affidavits and supporting papers 8-10 ; Replying Affidavits and supporting papers 11-13 ; it is,

**ORDERED** that this motion by the plaintiff for a preliminary injunction is denied.

The plaintiff manufactures and installs large commercial signs. On January 9, 2006, the plaintiff and the defendant entered into an employment agreement in which the plaintiff agreed to hire the defendant as a sales executive for an unspecified period of time. The agreement contains a restrictive covenant, which provides in pertinent part as follows:

Swift agrees that for a period of two (2) years after the termination of this agreement, Swift will not, directly or indirectly: (a) canvas, solicit, offer, or otherwise initiate commercial transactions with the Company's present manufacturers, distributors, customers, and/or suppliers, to the extent Swift continues in the industry...(b) request or advise any of the past, present and/or future manufacturers, distributors, customers, and/or suppliers of the Company's, to withdraw, curtail or cancel its business relationship with the Company...

The plaintiff terminated the defendant's employment on May 21, 2009. The plaintiff alleges that, since the defendant left its employ, the defendant has diverted customers and business away from the plaintiff. The plaintiff moves for a preliminary injunction enjoining the defendant from contacting or soliciting its customers, enjoining the defendant from initiating any communications with its customers and suppliers, and directing the defendant to return all customers lists, supplier lists, and any other business information in his possess that is not available to the general public and that was obtained by the defendant during his employment with the plaintiff.

It is well-settled that a party seeking a preliminary injunction must demonstrate a likelihood of success on the merits, irreparable injury if the injunction is not granted, and a balancing of the equities in his or her favor (**Cliff v R.R.S. Inc.**, 207 AD2d 17, 19)

Since there are powerful considerations of public policy that militate against sanctioning the loss of a person's livelihood, restrictive covenants that prevent an employee from pursuing a similar vocation after termination of employment are disfavored by the law. They are only enforced to the extent necessary to prevent the disclosure or use of trade secrets or confidential information or when the employee's services are unique or extraordinary (**Columbia Ribbon & Carbon Mfg. Co. v A-1-A Corp.**, 42 NY2d 496, 499).

A trade secret must first of all be a secret (**Ashland Mgt. Inc. v Janien**, 82 NY2d 395, 407). Matters of public knowledge or general knowledge in an industry cannot be appropriated by one as a trade secret (*see*, **Delta Filter Corp. v Morin**, 108 AD2d 991, 992). Thus, trade-secret protection will not attach when the alleged confidential information is readily ascertainable from non-confidential sources (**Zurich Depository Corp. v Gilenson**, 121 AD2d 443, 444-445; **J & L Am. Enter., Ltd. v DSA Direct, LLC**, 10 Misc 3d 1076[A] at \*4). When the names of the employer's customers are readily ascertainable from sources outside the business, trade-secret protection will not attach, and solicitation by the employee will not be enjoined (**Columbia Ribbon & Carbon Mfg. Co. v A-1-A Corp.**, *supra* at 499; **J & L Am. Enter., Ltd. v DSA Direct, LLC**, *supra* at \*4). Likewise, the identities of suppliers are not trade secrets (**Matter of Three Dots v Lonny's Wardrobe**, 292 AD2d 309, 310).

The court finds that the plaintiff has failed to establish that its customer and supplier lists are confidential or that the defendant is in possession of information that is only available from confidential sources. The plaintiff has failed to demonstrate that it has taken any measures to guard the secrecy of its customer and supplier lists (*see*, **J & L Am. Enter., Ltd. v DSA Direct, LLC**, *supra* at \*4). In fact, the plaintiff has annexed both such lists to its order to show cause. A review of those lists reveals that the information contained therein could be acquired or duplicated by others. The mere fact that it suited the plaintiff to keep such information from others does not confer trade secret status upon it (*see*, **Wiener v Lazard Freres & Co.**, 241 AD2d 114, 124). The court also finds that the plaintiff's conclusory assertions are insufficient to establish that the defendant's services were unique or extraordinary

and not merely of high value to the plaintiff (*see*, **Columbia Ribbon & Carbon Mfg. Co. v A-1-A Corp.**, *supra* at 499). Accordingly, the plaintiff has failed to demonstrate a likelihood of success on the merits.

The plaintiff has also failed to demonstrate irreparable harm. One of the requirements for a preliminary injunction is that the movant has no adequate remedy at law (*see*, **Cliff v R.R.S. Inc.**, *supra* at 19). Although the plaintiff has alleged both a loss of business and customer goodwill, it has also set forth a claim for money damages in the amount of \$89,000. Accordingly, the court is unpersuaded that the plaintiff's losses are not compensable by money damages.

Finally, the court finds that, if the injunction were granted, the injury to the defendant would substantially outweigh the benefit to the plaintiff. Accordingly, the motion is denied.

Dated: July 30, 2009

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J.S.C.